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(13) The Court erred in overlooking that there was still a much stronger reason why the Court could

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(16) The most important question in this appeal is this: The Court recites that on Sept. 15, 1942 this cause came on for trial (before the District Court) on the Debtors' petition for an extension of time to redeem, and to pay the $5650.00 into Court on all the issues including and on the Creditor's cross-petition or answer to recover of the Debtors its claim of alleged rent in the sum of $4606.25 and the Debtor being in Court and by Counsel and the Federal Land Bank by Theo. W. Bates, its Counsel and the Court having "and the Court having read the verified petition of the Debtor and heard the argument of Counsel." (This must have been a trial on all of the issues enumerated in the final finding and order on page 51.) What in the world was Mr. Bates arguing if it were not the issues set out in said order

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including the demand for the above alleged rent of $4606.25, as set in its answer. Record page 35 and referred to in the order page 51. * * *"and being fully advised in the premises finds the following." "That said petition of said Debtors is granted." Then the Court rendered judgment on said finding as follows: "That said time heretofore granted to said Debtors in which to redeem said real estate is extended and said Debtors are allowed the same at this time, by paying into Court the sum of $5650.00 as payment in full of said mortgage debt." (Thus the Court hooked up its action with its previous finding of February 17, 1942. Then the Court further adjudged that the payment of the amount of the appraisal and the Debtor was discharged of the balance of said debt above the $5650.00. The sheriff's sale in the Wabash Circuit Court was set aside. (After Mr. Bates heard all of that does it not seem foolish for him to now say the Court was not trying anew said cause and record does not show he made any objection to what the Court was doing)..... 41

(17) It thus appears the District Court says in its order that all these issues were submitted for trial before Judge Slick in the presence and hearing of Mr. Bates. That it will be presumed the latter argued each of them and now he is contending there was no trial of said issues before Judge Slick. But the Court judicially says there was such a trial and that Mr. Bates took part in it. It is implied the Court found it had jurisdiction of the case. The record fails to show that Mr. Bates attacked this finding that the time should be extended and the Debtors allowed to redeem at the appraised value and that the Land Bank take nothing on its claim of rent by assigning that it was not sustained by sufficient evidence. The Creditor has lost its right to attack that finding by not raising

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the question below and it was not before the Court of Appeals. It could not decide a question not before it. So that Court erred in striking down said finding and ordering the Debtors' petition to redeem to be dismissed 44

(18) In 18 it is shown the Court knew he was hearing and finding the facts and deciding this cause, and changed the first erroneous finding to make it conform to the decision of this Court in the Wright case. That was all it did and it should remain that way and be administered according to the provisions of the Act, the decision of this Court..... 45

(19) In 19 the doctrine of Blackstone that: "It is the business of the Judge so to construe the Act as to suppress the mischief and advance the remedy." That is what this Court stated should be the rule in the Wright case—to so construe this remedial Act as to give the "distressed farmer," so as to give the "Debtor the full measure of relief afforded by Congress."..... 46

(7) ARGUMENT

(A) SUMMARY OF ARGUMENT

(1) It is shown the plan of allowing the Creditor to take alleged rent of $4,606.25 in addition to the appraisal was no different between ordering the land sold at public auction and denying redemption and allowing the Creditor to bid $11,775.93 at the sale. Either plan was a device to deprive the Debtors of the right to save their home. Congress never provided for either plan, as against the "Fundamental statutory right to redeem.".. 48

(2) Court of Appeals overlooked that the last hearing only corrected the erroneous first. The Court had made a great mistake and corrected it in the last

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finding and judgment. The first order requiring the rent of $4,606.25 to be paid in addition to the appraisal was in direct conflict with the decision in the Wright case. It had to be corrected so the Court found the time to redeem should be extended and that the rent was disallowed bringing it in harmony with said Supreme Court decision.. 48

(3) The case was still pending. The land had not been sold. Hence, the Court could correct the awful mistake. The Creditor did not attack the finding. It stands. Its failure to assign error as to the finding that it was not sustained by sufficient evidence was fatal. The question was not before the Court. The Court could not exercise a power it did not possess, or decide a question before it. It had to approve this finding. Holding that this finding to redeem was void had no effect on it. It still stands in favor of the Debtors..... 49

(4) The Court of Appeals could not challenge the finding that the Debtors should redeem unless raised below. It could not raise the question..... 49

(5) The Action of the Creditor conferred jurisdiction on the Court to correct the error of trying to overrule the Wright case 50

(6) The Creditor consented to make this correction and try the case over again by filing its cross-action to require the Debtors to pay $4,606.25 of rent. (R. 35) 50

(7) The Court had the inherent power to correct its awful mistake in trying to overrule the decision of this Court of December 9, 1942, several months preceding its first order of February 17, 1942. That would never do to allow a District Court to to overrule the Supreme. To contend that such an order should be allowed to stand and that the Court did not have the power to correct is absurd and unreasonable 50

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(8) (9) (10) Black on judgments, Remington on Bankruptcy and the Ives case all hold the Court was open and this mistake could be corrected even out of time. There should be no tenderness against such a deadly order. It should be blotted out even after time 51

(10) This Act does not provide that the Court of Appeals can set aside this order allowing redemption unless it was attacked in the trial Court below.... 51

(B) ARGUMENT PROPER

(2) We quote from Brandenburgh—a Court of Equity will deal with the rights of the parties upon their merits and not be controlled by strict legal forms. Then listen to Blackstone when he says: "And it is the business of the Judges so to construe the Act as to suppress the mischief and advance the remedy." That means what the Supreme Court states in the Wright case: "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced (sheriff's) sales and an oppressive burden of debt." The Court of Appeals should have lifted that burden..... 52

(5)-(6) Instead of that it denied relief from the awful burden of debt and ordered the land sold in effect at $11,775.93. That meant the Debtors must bid "Good Bye" to their Home. Even though this Court says the Creditor had no "Constitutional Claim to more than that" ($5650.00). That the Court of Appeals denied redemption and in effect approved a public sale of the land at which the Creditor will be allowed to bid its debt of $11,775.93. That would kill redemption as dead as a "door nail." No Court should ever put its stamp of approval on such an unjust plan as that..... 53

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

In the Matter of James N. Roney and Marguerite C. Roney, *Debtors,* James N. Roney and Marguerite C. Roney, *Petitioners,* vs. The Federal Land Bank of Louisville, Kentucky, *Respondent.*	No. ———

Debtors' Petition for Review by Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit and Brief in Support Thereof.

To Honorable Harlan Fiske Stone, the Chief Justice and Associate Justices of the Supreme Court of the United States:

I

PRELIMINARY

(1) Your petitioners, James N. Roney and Marguerite C. Roney, husband and wife, respectfully show:

That they are aggrieved by the opinion and judgment of the United States Circuit Court of Appeals for the Seventh Circuit, entered December 2, 1943.

(2) That the judgment of the trial Court which preceded said appeal was rendered in the United States District Court for the Northern District of Indiana, Fort Wayne Division by Hon. Thomas W. Slick, Judge of said Court, in which he allowed said Debtors to redeem their Home farm by paying into said Court the appraised value of $5650.00, previously fixed by said Court. That the Creditors appealed from said judgment to said Circuit Court of Appeals. In the latter said Court reversed said judgment below, and directed that the Debtors' petition to redeem should be denied and that said real estate should be ordered sold at public auction and that the Creditor be allowed to bid its debt of $11,775.93 at said sale and thereby required the Debtors to pay said last named sum for $5650.00 worth of land.[1]

(3) The petitioners present their petition to this Court and ask for a writ of certiorari requiring said Court of Appeals to send up the record in said cause for review and pray that the errors therein be corrected and that said judgment, denying them the right to redeem their Home be in all things reversed and set aside.

(4) That this petition will be accompanied by a transcript of the printed record in the case, including a printed record of the proceedings in said Circuit Court of Appeals after it reached said Court down to the close of said Appeal in said Court, Duly certified by the Clerk of said Court.

II

SUMMARY STATEMENT OF THE MATTERS INVOLVED

(1) This is a proceeding under Section 75 of the Act

[1] The decision of the Court of Appeals is found in the Record page 70-75.

of Congress of March 3, 1933, relating to Agricultural Compositions and Extensions as amended by adding a new Subsection (s) August 28, 1935. (11 U. S. C. A. 203 (s)). Designated as The Frazier-Lemke Act.

(2) The Supreme Court in Wright vs. Union Central Life Ins. Co. (December 9, 1940) (311 U.S. 273) defined the Act as follows:

> "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt."

(3) It may be suggested that the farmers are not distressed now. Suppose they are not. But go back to 1933 and 1935, and their condition was such that the papers were full of notices of sheriff's sales of farm land and thousands of them would have lost their homes had Congress not enacted this remedial legislation. Even with this legislation, in some Counties in Indiana, 20 per cent of the land owners have lost their homes.[1]

(4) Then the bitter fight made by the Loan Companies in the Courts against this legislation cost thousands of farm homes. The case at bar is one that came up when farmers could not make enough to pay the taxes on their land, and it is still pending. The books are full of cases where the Inferior Federal Courts had refused to give the "distressed farmers" the benefits of these Acts. How unreasonable. They held that the Acts were unconstitutional, that Congress had no power to enact a law extending the period to redeem for three years, that the Debtors had not filed their petitions in good faith and that there was no reasonable hope that they could ever rehabilitate

[1] It is estimated the doors were closed against a half million farm home owners.

themselves within the three-year period and other technical objections which threw the "distressed farmers" out of Court and caused them to lose their homes.

(5) Not wishing to find any fault with Congress—(It is blamed for everything which goes wrong), but it had not provided any way to obtain the money with which to redeem. For without the aid of Congress they were as helpless as a child. That prior to September 2, 1942, when they were ready to pay the $5650.00 into Court in this cause, it was impossible to procure a farm loan from the Banks or Loan Companies. Their doors were closed against them to punish them for taking the benefits of this Act of Congress. These "distressed farmers" found themselves between two millstones. True, they had a law and decision of the Supreme Court in the Wright case which allowed them to redeem their home at its appraised value of $5650.00, but their Government had not provided a way to get the money with which to pay the appraised value.[1] Without that the law was largely a "dead letter" until land went up and the Banks and Loan Companies began to open their doors for farm loans. Hence, the Petitioners struggled along (but many gave up the ghost) rather than resort to litigation in distant Federal Courts.

(6) The history of a case is a part of the case and hence these facts are necessary to explain why the District Court had to extend the time so as to give the Debtors more time than was first given in which to enable them to save their Home. (It will not be disputed but that the father had lived all of his life thus far, 74 years on this farm.)

(7) The rules of construction of a law are an impor-

[1] As a policy to resist this Act of Congress the Loan Companies refused to loan when the "distressed farmer" sought to obtain relief under this Act of Congress.

tant part of the law. There are two general rules: One a strict construction and the other a liberal. However, the paramount rule is the intention of the lawgiver must control. As old as the law itself is the rule: "That the intent of the Lawgiver is the law." A Standard Author 59 Corpus Juris 948-952 defines the latter rule as follows:

> "(a) As the intention of the legislature embodied in a statute, is the law, the fundamental rule of construction, to which all others, are subordinate, is that the Court shall, by all aids available, ascertain and give effect to the intention of the maker."

(8) How should this remedial Act be construed to give relief to the "distressed farmers faced with the disaster of forced sales and an oppressive burden of debt?" Listen to the language of the Supreme Court.

> "Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property. John Hancock Mut. L. Ins. Co. vs. Bartels, supra (308 US at pp. 186, 187, 84 L ed 180, 181, 60 S Ct. 221, 41 Am Bankr Rep (NS) 296); Borchard v. California Bank, supra (310 US at p. 317, 84 L ed 1225, 60 S Ct 957, 42 Am Bankr Rep (NS) 596). There is no constitutional claim of the Creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress. (John Hancock Mut. L. Ins. Co. v. Bartels, supra; Kalb v. Feuerstein, 308 US 433, 84 L ed. 370, 60 S Ct. 343, 41 Am Bankr Rep. (NS) 501, supra), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."
>
> Wright Case, 311 U.S. 273.

(9) Note the Creditor is to be protected (a) "throughout the proceedings to the extent of the value of the property." "The supreme law of the land" has brought the debt down to that." No difference what his debt might be he was to have only the value of the property—not a penny more. (b) "There is no constitutional claim of the creditor to more than that $5650.00." The Court of Appeals overlooked that. It denied the Debtors the right to redeem on that basis. It adopted a plan clear outside of the Act of Congress which denied the Debtors the benefits of the Act by requiring them to pay $11,775.95 for $5650.00 worth of land. It made it utterly impossible to obtain a loan on that basis and gave the land to the Creditor.[1]

(c) The Court must give the benefit of the doubt in favor of redemption.

(d) The Act must be liberally construed to give the Debtors "the full measure of relief afforded by Congress" and this must be done "lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."

(e) There never was a more careful admonition given by a Superior Court to a lower Court.[2] We will show the Court of Appeals disregarded these rules and adopted narrow-minded technical rules which frittered away these benefits "by narrow formalistic interpretations which disregarded the spirit and letter of the Act."

Wright Case, 311 U.S. 273.

---

[1] In allowing the redemption Creditor to bid its dead debt above the value of the land, meant financial death to the farmer. The District Court saw that peril and the Court of Appeals should have approved its action. But it "turned by on the other side."

[2] This instruction was given to the Court of Appeals but it did not heed it. It was instructed that nothing should be allowed to stand in the way of allowing the Debtor to redeem his home. That it should so construe the Act so as to allow him to keep his Home.

III

STATEMENT DISCLOSING THE BASIS UPON WHICH IT IS CONTENDED THAT THE SUPREME COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE COURT OF APPEALS

(1) The petition for a rehearing was denied January 3, 1944, and hence the time in which to perfect this appeal began to run on said date.

> "Section 240 (a) of the Act of May 13, 1925, defining the jurisdiction of the Supreme Court provides that in any case in a Circuit Court of Appeals it shall be competent for the Supreme Court of the United States upon the petition of any party thereto to require by certiorari that the cause be certified to the Supreme Court. Rules Appendix p. 3 Subsection 8 (a) of said section 240 provides that application for said writ may be filed within three months after the entry of judgment and that for good cause said time may be extended not exceeding 60 days by a Justice of said Court." Rules Appendix p. 7.

(3) "Notwithstanding these statutory provisions a review on writ of certiorari is still a matter of sound judicial discretion and will be granted where there are special and important reasons therefor.

Paragraph 5, Rule 38, Supreme Court, pp. 31-32."

This covers the "proceedings in bankruptcy" and "controversies arising in proceedings in bankruptcy to review" the same.

"SEC. 24 JURISDICTION OF APPELLATE COURTS.—a. The Circuit Courts of Appeals of the United States and the United States Court of Appeals for the

District of Columbia, in vacation, in chambers, and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction from the several courts of bankruptcy in their respective jurisdictions in proceedings in bankruptcy either interlocutory or final, and in controversies arising in proceedings in bankruptcy, to review, affirm, revise, or reverse, both in matters of law and in matters of fact."

"c. The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in proceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted." (Sec. 24 Chandler Act. or Sec. 47 (11 U. S. C. A. (c)).

The record discloses that the judgment herein involved more than $500.00.

IV

THE QUESTION PRESENTED

Let us examine the record and see what the questions presented are:

(1) On February 17, 1942 the Court entered an order fixing the value of the land at $5650.00 and gave the Debtors 90 days in which to redeem. The Court also ordered the Commissioner to determine the rent due, which had been fixed at 2/5 of the crops. It ordered the land sold at public auction and gave the Creditor the right to bid its $11,775.95 debt at said sale. (R. 27-28.)

(2) The redemption money was not paid into Court at the end of the 90 days but the Creditor took no steps

to sell the land. The Creditor acted as though it had abandoned its sale set out in the order.

(3) There was nothing further done until September 2, 1942. Then the Debtors filed their petition to redeem the land at the $5650.00.

(R. 28) (Pet. R. 28-31.)

The petition set out the order of February 17, 1942. That said Debtors are now ready to pay said sum into Court. The Bank of North Manchester had opened its doors to make farm loans and had agreed to refinance the debt on the basis of its appraised value. That they had paid all of the taxes on the land and that the sum of $1000.00 would be required to repair the buildings, drains and fences on said land, the obligation of which was assumed by them. That they would make said repairs at their own expenses. (R. 28-30.)

(4) Wherefore they prayed the Court to allow them to pay said $5650.00 into Court, to enter an order herein turning over to them full possession and title to said land, free and clear of said mortgage debt and that said sum pay the whole mortgage debt and that they be discharged from the balance thereof. (R. 30-31.)

(5) The Creditor filed a motion to strike out the petition because it had not been filed in time and that no appeal had been taken from said order of February 17, 1942. (R. 31.)

(6) The Creditor ran away from the first order and took issue with the Debtors on the petition and denied that they were ready to pay said $5650.00 into Court. That it also denied that said Debtors had paid the taxes on said land and denied that the $1000.00 would pay for the repair of said buildings, ditches and fences on said

real estate. The Creditor also took issue with the Debtors that they should not be allowed to pay said $5650.00 on said basis. It denied the right of said Court to make an order that said $5650.00 shall pay the whole mortgage debt. (R. 34-35.) (It will be noticed that said Creditor did not plead res judicata or stand by said first order at all but answered the Debtor's new petition on its merits. This action of the Creditor set aside the first order or opened it up to the new issues raised by said new petition. It did not treat the first order as final.)

(7) Then the Creditor jumped over the fence and filed a cross-petition against the Debtors to recover $4606.25 of rent it claimed was due and should be paid by said Debtors. (R. 35, Paragraph II.) This rent was not set up at the previous trial and order of February 17, 1942. It was an entirely new cause of action and set aside said first order and took away the finality of said first order and the Creditor thereby abandoned its first order for a public sale, and made a new cause of action against the Debtors and sought to recover a judgment against them for said sum of which they did not owe a penny. All they owed and were required to pay to redeem the land was, according to the decision of the Federal Supreme Court in Wright vs. Union Central, 311 U. S. 273, said appraised value of $5650.00 and not a penny more.

(8) The Creditor filed seven more pages of answer to said Debtors' petition, all of which were to the effect that the Debtors should pay $4606.25 of rent in addition to the $5650.00, and that it wanted the Court to order the real estate sold at public auction and allow the Creditor to bid its debt of $11,775.95. (R. 18.) It saw that this was the easiest way to get this land from the Debtors. This meant denying redemption and turning the land over to

the Creditor, as the Debtors could not (no more than they could fly that moment) ever get a loan on said basis of having to pay $11,775.95 for $5650.00 of land. It will be shown later that the Creditor had stipulated that was all the land was worth.

(9) The Debtors' petition to redeem the land at its appraised value and the Creditor's answers "of many colors" were set for hearing before Judge Slick on September 15, 1942. (R. 43.) All of these issues were before the Court. When a case is set for hearing before a Court it does not go in piecemeal but every issue and question raised goes before the Court and it hears and determines—not a part of the questions—but all of them.

(10) It is the theory of the Creditor that the time to redeem under the order of February 17, 1942, ended May 17, 1942. That the Court had no power to extend it beyond said date. The Creditor had neglected to enforce a forfeiture on that date and allowed the matter to run along until September 2, 1942, without any action on the part of the Creditor, which amounted to an acquiescence in the extension of the time.

(11) After it goes to trial on the new issues it can not afterwards claim that the original order stands. No, it is superseded by the last judgment or the new issues.

The Creditor contends that the Debtors had no right to file the petition to redeem after May 17, 1942. It overlooked that the Creditor took the right to appear and file its answer to said petition and set up a new claim of $4606.25, and demanded a judgment against the Debtors, as late as September 5, 1942. (R. 31.) If the Creditor had the right to appeal out of time after May 18, 1942, and bring in a new claim of $4606.25 on September 5, 1942, and de-

mand judgment for the same, then the Debtors had the same right to file their petition out of time.

(12) When it brought in the new action, it opened up the former judgment of February 17, 1942, and gave the Court the same power to hear the petition to redeem as it had to try the new question of rent. The Creditor could not open the judgment and extend the time to hear its claim and deny the same right to the Debtors.

(13) We now come to the hearing and trial of the whole case on September 15, 1942. (R. 43.)

It is elementary that the law indulges every presumption in favor of the regularity of the finding and judgment of the Court. The District Judge heard the case and made as the law provides a special finding of facts and his conclusion of law thereon.

(14) The finding and judgment on the main question is as follows: "This cause coming on to be heard on the petition of said Debtors for an extension of time in which to redeem the real estate in said cause.") "And the Court having read the verified petition of the Debtors (and the Creditors answers were before the Court) and heard the argument of Counsel and being fully advised in the premises finds the following: (R. 43.) (It will be implied that the Court was advised of the stipulation of the parties which reads as follows:

"That said Debtor does not have the financial ability to rehabilitate himself and redeem said land on the basis of the amount of said mortgage debt which is now the sum of $11,775.95 within the time of said Moratorium.

"That said Debtor has the financial ability and funds necessary to redeem said land and to rehabilitate himself and to reorganize himself provided he is allowed to re-

purchase the real estate at its value, which value is now as found by the Special Master in the sum of $5650.00. 1/22/40.

John S. Grimes, Attorney,
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224 E. Broadway, Louisville, Kentucky.

Samuel E. Cook,
Attorney for James E. Roney,
Debtor, Huntington, Indiana."
(Transcript Pages 2 and 3.)

Then the Court further found: "That said petition of said Debtors to redeem is granted" (R. 43.)—"It is therefore ordered, adjudged and decreed that said time heretofore granted to said Debtors in which to redeem said real estate (this was the 90 days in the order of February 17, 1942) is extended and said Debtors are allowed to redeem the same at this time, by paying into Court the sum of $5650.00, as payment in full of said mortgage. (R. 42-43.)—Therefore the full possession and title to said real estate is now ordered turned over to said James N. Roney and Marguerite C. Roney, husband and wife, free and clear of said mortgage debts and of all of the other obligations of said Debtors which real estate is more particularly described as follows:" (R. 43-44.) (H. I.)

"It is further ordered and decreed that the payment of said redemption money of $5650.00 shall pay the whole of said mortgage debt and that said Debtors are hereby discharged from the balance of said debt and said judgments foreclosing said mortgages of said Creditor in the Wabash Circuit Court over and above said $5650.00 and said judgments and mortgages herein, in said Court are declared satisfied in full." (R. 45.)

Also, "That the Sheriff's sale of said real estate in the Wabash Circuit Court on said judgments, foreclosing said mortgages are hereby set aside and held for naught. That the Certificate of sale and Sheriff's deed, if any there be, is also set aside and held for naught. And if any deed has been issued to said Creditor on said Sheriff's sale, the same is hereby set aside and held for naught.

Dated September 15, 1942. Thos. W. Slick, Judge of the District Court of the United States for the Northern District of Indiana, South Bend Division." (R. 45-46.)

True, this petition had been filed out of time but the action of the Creditor in taking issue on the new petition and the action of the Creditor in bringing the new action as to the rent of $4,606.25 in its answer in the proceedings in the new petition. (R. Par. II, 35.) It put this rent in the mill and it had to be ground out. Then the action of the Debtors in bringing into the new petition the $120.00 to cover taxes paid by the Creditor and the Debtors' showing that they had paid all of the taxes on the land in the sum of $853.50, made an entirely new case before the Court. The Creditor can not take issue on these new questions and try them in Court and then say the Court was trying the old questions in the first trial and was not trying these new questions. The Court heard the evidence in the new case and rendered judgment. The Creditor appealed from this last judgment and did not appeal from the first. The new judgment supersedes the old one. The Creditor recognized the new judgment by appealing from it. Consider the notice of appeal in a new case. (R. 46-47.) It filed its appeal bond in the new case. (R. 48-49.) Consider its designations of parts of the record to go into the transcript on appeal. (R. 53.) It called for its answer as follows:

"(5) Answer of the Federal Land Bank of Louisville to the Debtor-Bankrupts petition to redeem the land at the appraised value filed on or about September 5, 1942." (Query! What was it answering on the merits, if it was not before the Courts?) That is what the Court was trying. The Court referred to the first order by using the word time—"heretofore granted to said Debtors, in which to redeem said real estate." (R. 43-44.)

(15) This was not an idle ceremony of the Court. It was a solemn finding that under all of the circumstances of the petition to redeem was granted and judgment was entered on said finding. It was a judgment "founded on a rock".

(16) The Creditor appealed at once to the Court of Appeals. Did it raise any question against this finding of fact as to the right to redeem? None whatever. To question this finding the Creditor in taking its appeal would have to assign an error that this finding i. e.: "That said petition of said Debtors to redeem is granted" (R. 43)—is not sustained by sufficient evidence, and then take the evidence up to the Court of Appeals. This rule is as old as the law itself and is so well-settled that no citation of Federal or local State law need to be cited. And also, that the second finding: "That————said time heretofore granted to said Debtors, in which to redeem said real estate is extended and said Debtors are allowed to redeem the same at this time, by paying into Court the sum of $5650.00 as payment in full of said mortgage debt. ———" (R. 43-44.)

(17) An examination of the Creditor's assignment of error or "Statement of ——— Points," which takes its place, under the new Rules, will not show the Creditor ever assigned as error or stated as a point that this finding

was not sustained by sufficient evidence." (R. 55.) At any rate the record does not show that the Creditor ever took up any evidence on that point. The record fails to show the Creditor raised that question in a motion for a new trial or in any other way. It is as "silent as the tomb" on that question. Why did the Court of Appeals fail to point out that defect in the record, that the question had not been raised in the trial and hence it had no power to deny the "Debtors' petition to redeem." In doing that it set this finding aside—threw it "out of the window—." Such action is held by the Courts as "arbitrary and capricious," and null and void.

(18) The Creditor's object in appealing from the judgment of September 15, 1942, was to recover the alleged rent of $4606.25 and to "appoint a Trustee to sell the real estate," and bid its debt at said sale and thereby make redemption utterly impossible. The Appellants Point (R. 47) also complain that "the Court in overruling the motion of the Federal Land Bank for an order appointing a Trustee and directing a sale of the real estate." (R. 55.)

(19) Turning back to said motion on (R. 40), it will be found that it has included in that motion the following: "The Creditors have the right to bid at said sale up to the amount of their claim." (R. 18.) A nice scheme to make it impossible to redeem. On one plan it wanted the following:

Appraisal	$5650.00
Alleged rent	4606.25

$10,156.25 for $5650.00 worth of land.

The other plan is as follows: "That the Debtors' petition to redeem the land at $5650.00 should be denied and that the petition of the Creditor that the land be sold at public auction and that the Creditor be allowed to bid at

said sale, the amount of its debt ($11,775.93.)" (R. 18.) Again, $11,775.93 for $5650.00 worth of land. That makes the Act no law at all for the relief of distressed farmers. He asked "for a fish and was given a serpent." He asked "for bread and was given a stone."

(20) It is plain that such plans meant the loss of their Home, every time. The Court could see that this would be the result. The Court of Appeals in denying the right to redeem at the value of the land and providing for further proceedings, in effect means it intended a sale like the Creditor prayed for above i.e.: "—That the land be sold at public auction and that the Creditor be allowed to bid at said sale the amount of its debt, $11,775.95." (R. 18.) That is what the order made herein reversing the judgment of the District Court means. The Court did not heed the admonition of this Court in the Wright case.

(21) What was the rest of the order? The taxes are a lien on the rent. Hence payment of the taxes pays the rent. Then the Court found the taxes on the land were all paid. That paid all of the rent. So the Court refused to allow the $4606.25. When it got the appraised value of the land it was not entitled to a penny more. Hence this surplus rent belonged to the Debtors. The Supreme Court held in Wright vs. Union Central, 311 U. S. 273, that the Creditor has "no Constitutional claim," to more than the appraisal of the land.

(22) It will be noticed that the Creditor in presenting its deadly claim of $4606.25 as rent for the land in its answer paragraph II (R. 35) in addition to the appraisal shows that it is a dispute solely between the Debtors and itself. That it is not a dispute between contesting Creditors. Bear in mind the Creditor here is not in the class of general creditors, those holding secondary liens. It is the

first mortgage holder. The Act treats it in a class of its own and not in the others named above. The Court in the Ezell case which will be discussed presently said, "The Act is not at all clear" when the controversy is between Creditors, other than the Creditor holding the first mortgage lien. When it gets the value of the land it ceases to be a creditor. It has no "judgment over" or "deficiency judgment," its claim has been satisfied and it has no further interest in the rent and goes out of the case. Thus we will not need to notice any contests only as are between the first lien holder and the Debtors.

(23) Let us notice the decision in re Ezell District Court W. D. Missouri Central Division, April 30, 1942. (45 F. Supp. 164.)

It holds in substance that as between the First Mortgage lien holder and the Debtor, like here: "The Debtor then paid into Court for the use of the Creditor the full amount of the re-appraised value, to-wit: "$6000.00 whereupon an order was made vesting title in the farm to Mr. Ezell free and clear of all incumbrances."

Exactly as here: "The Debtor contends that the payment of the full appraised value of the farm to the Creditor is all that the statute requires him to do in order to obtain full title to the property. Like here: "The Creditor contends that the rentals paid to the Conciliation Commissioner" —were not payments upon the principal of the obligation and should be paid over to the Creditor" —"but should be considered as payment by the Debtor for the use of the premises which he retained—." The Court concludes: "The full amount of the re-appraised value of the property was paid by the Debtor. The Creditor has therefore, received all that it may, under the statute, all that it may demand as a prerequisite to

the transfer of the unencumbered title to the Debtor. The unexpended funds should, therefore, be returned to the farm-debtor." The fact that the rental was paid to the Commissioner there and was not so paid here, makes no difference. The principle is the same.

It follows that as between the first mortgage lien holder and the Debtor, the rent went for taxes and up keep of the property and when the Debtor paid the appraisal of the land into Court, the Creditor had no further interest in the case nor in the rent. To repair the buildings etc., that fell upon the Debtors. They took the land back with the obligation to pay for the repairs needed on the land and building fences, ditches, etc. It was their own land.

(24) The following question was not presented: The Creditor failed to assign as error that the findings of the Court, that the Debtors' petition to redeem was granted, was not sustained by sufficient evidence and also failed to take the evidence up in its appeal.

(25) There is another line of cases which hold that the District Court had jurisdiction of the question of redemption, even after May 18, 1942, on the ground that bankruptcy proceedings are—at all times open and any order made may be reexamined and vacated where the rights of third persons have not intervened. When the District Court extended the time to redeem as set out above, the proceedings were still pending in the District Court and was still litigation between the original parties. These cases will be presented in the supporting Brief which will be annexed to this petition herein.

V

THE REASONS RELIED FOR ALLOWANCE OF WRIT

1. The first reason why the Writ should be allowed is as follows:

The District Court heard and tried the whole case on September 15, 1942. It found as a fact—"And (the Court) being fully advised in the premises finds the follow—(ing): That said petition of said Debtors to redeem (the land) is granted—and that the Federal Land Bank take nothing by its claim for rent as set out in its answer herein." (H. I.) (R. 43.) "And its motion to strike out and appoint a Trustee to sell said real estate is denied." (H. I.) To each of which the Creditor excepted. (R. 43.) That does not raise any question as to said findings. It failed to attack the finding—"that said petition———to redeem is granted," and the finding: that said time heretofore granted to said Debtors, in which to redeem said real estate is extended and said Debtors are allowed to redeem the same at this time, by paying into Court the sum of $5650.00 as payment in full of said mortgage debt" was not attacked. To raise any question against them it should have stated that said findings are not sustained by sufficient evidence and then take up the evidence on that fact as part of the appeal to the Court of Appeals. Merely excepting raised no question against facts, and did not raise any questions that they were not sustained by sufficient evidence.

Since there was no question raised in the trial Court against the facts found by the Court and the judgment thereon in the last order of September 15, 1942, the action of the Court in granting the Debtors the right to redeem and in extending the 90 days in the previous order, hooked

up the last proceedings with the first entered on February 17, 1942. Those facts stand in favor of the Debtor like a "stone wall." For this reason the Court of Appeals had no power to set aside these findings of fact and hold them false and it could not disregard them and dismiss the Debtors' petition to redeem. This action of the Court of Appeals is in conflict with Rules of evidence in the Federal and State Courts and is incurable error. This remedial Act cannot be carried out except by reversing the judgment of the Court of Appeals.

2. The second reason is as follows:

The Creditor entrapped itself by taking issue on the new petition and by a cross-action seeking to get a judgment against the Debtors for $4,606.25 of alleged rent. The Creditor was not satisfied with the appraised value and its admitted value as set out in the stipulation of $5650.00. Like "Micawber—its plate was always up for more." It saw a "shadow" of this enormous sum and "grabbed for it." In that way it in effect set aside the first order. It met this new petition on the merits as follows:

"PARAGRAPH II

> "Further answering herein the Bank states that the rental value of said tracts of land consisting of 144-1/4 acres is not less than $5.00 per acre per year; that rental is due and unpaid for the years 1937 to 1941 (both inclusive) in the aggregate amount of $3,606.25; that the Debtor-Bankrupt has also had the use of said land during 1942 and if allowed to redeem, rental should be paid for that year in amount of $1,000.00." (R. 35.)

This made a new case, and the findings and judgment therein superseded the first order. The Creditor ventured too far on "thin ice."

3. The third reason is as follows:

The action of the Court of Appeals in refusing to allow the Debtors to redeem at the appraisal and in effect allowing a public sale with the right to bid its debt of $11,775.93, is in conflict with the decision of this Court in Wright vs. Union Central 311 U. S. 273 which held the following:

> "Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property. ——— There is no constitutional claim of the creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress." (P. 168-169.)

The decision of the Court of Appeals is in conflict with the above statement of the law.

The right to redeem was superior to a public sale of the land and redemption should have been allowed rather than an order of public sale. The latter is subordinate and must give way when the Debtor can raise the money to redeem.

4. Another reason.

Then the Court adds in substance: The "distressed farmer" is not on an equality with the Loan Company in these words:

> "Then the Debtors' rights under the first proviso would be either dependent on the outcome of his race of diligence with a Creditor for which customarily he would be fully equipped."
> (311 U. S. 273.)

This judgment conflicts with that. Citing Kalb Case 308 U. S. 433.

5. ANOTHER REASON.

To terminate the proceedings by a public sale is a harsh remedy. It is subordinate to giving the Debtor every possible chance to save his home and should not be resorted to only when all other remedies are exhausted. If there is financial ability to redeem, that should have preference over a forfeiture and an order of public sale. In other words, as long as the case is still before the Court undisposed of and is still litigation between the original parties and the contest is between a home owner who has raised the money to redeem and a Creditor who is demanding a public sale and in this case also demanding the right to bid its whole debt of $11,775.93 and thereby ask the Court to make such a harsh order as that when in his own conscience the Court knows that such an order will defeat the intent of Congress and make redemption impossible. That it will not save a farm home but lose one. That in a contest, like that, the Supreme Court means the Debtor should have the preference, even though he has been slowed up, because the Banks and Loan Companies closed their doors against him for a time. A boy ten years old knows that his father would always redeem the home for his family, if he could get the loan. The action of the Court of Appeals did not heed this, hence its decision conflicts with it. (Wright vs. Union Central, 311 U. S. 281.) (85 L. Ed. 184-189.) We cite the Wright case in support of the above statement of the law.

Special attention is called to the statement of the Court on the powers of the District Court in the opinion in the Wright case 280-311, U. S. P. 281. (We have no official U. S. Repts in our Court Library here.)

The part of the opinion we are citing is as follows: In the 85 L. Ed. pages 280-281, beginning with the word—"Respondent" and ending "Sec. 75—(3)". In the official edition it begins with "Respondent" page 280.

These decisions of the Court of Appeals is in direct conflict with the above statement of the law and also the Wright case.

Here is part of what the Court said:

> "—to hold that the court has the discretion to deny or to grant the debtor's right to redeem at the reappraised value or at the value fixed by the court, dependent on general equitable considerations, would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate." (Wright vs. Union Central, 311 U. S. 273, at page 281.)